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MARY L.M. MORAN
CLERK OF COURT

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MILAROSE NILOOBAN

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

ELIZABETH TOLOSA-TAHA)	CIVIL CASE NO. 06-00002
)	
Plaintiff,)	
vs.)	DEFENDANT MILAROSE NILOOBAN'S
)	REPLY MEMORANDUM IN SUPPORT
MILAROSE NILOOBAN, NILO)	OF HER MOTION TO DISMISS;
NILOOBAN, THE TESTATE AND)	CERTIFICATE OF SERVICE
INTESTATE SUCCESSORS OF EDGAR)		
G.M. TOLOSA, DECEASED, AND ALL)		
PERSONS CLAIMING BY, THROUGH)		
OR UNDER SUCH EDGAR G.M.)		
TOLOSA; ALL PERSONS UNKNOWN,)		
CLAIMING ANY LEGAL OR EQUITABLE)		
RIGHT, TITLE, ESTATE, LIEN, OR)		
INTEREST IN THE PROPERTY)		
DESCRIBED IN THE COMPLAINT)		
ADVERSE TO PLAINTIFF'S TITLE, OR)		
ANY CLOUD ON PLAINTIFF'S TITLE)		
THERE TO; AND DOES 1 to 50,)		
INCLUSIVE,)	
)	
Defendants.)	

INTRODUCTION

The problem with the Plaintiff's Opposition is that her arguments have no supporting authorities. Not even the U.S. Supreme Court case of Marshall v. Marshall, 126 S.Ct. 1735 (2006), is helpful to the Plaintiff.

ORIGINAL

1 In her attempt to avoid dismissal, the Plaintiff provides comparable property
2 values to its Opposition to raise the "amount in controversy" to at least \$75,000.00. In
3 addition, the Plaintiff then cites the Marshall case as supporting authority for her
4 proposition that federal courts have jurisdiction over this matter to adjudge her as heir
5 so that she will have quiet title. As will be shown below, the amount in controversy
6 between the Plaintiff and Defendant MILAROSE NILOOBAN ("NILOOBAN") does not
7 even reach \$75,000.00, and if the Plaintiff is still seeking to have quiet title of the real
8 property at issue in her name, then that is the subject matter left solely within the
9 jurisdiction of Guam's probate courts.
10

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 **I. THE FEDERAL COURTS HAVE NO JURISDICTION TO ADMINISTER 13 AN ESTATE.**

14 The "probate exception" to proper federal jurisdiction reserves to state probate
15 courts, the administration of a decedent's estate. The probate exception precludes
16 federal courts from disposing of property that is in the custody of state probate courts.
17 Marshall v. Marshall, 126 S.Ct. 1735, 1748 (2006). Federal courts do not exercise
18 jurisdiction in matters which would "interfere with probate proceedings." Markham v.
19 Allen, 326 U.S. 490 (1946).
20

21 To support her unique argument that this Court can adjudge her as an heir and
22 give her quiet title, the Plaintiff relies on Marshall. A closer examination of Marshall
23 quickly disposes of the Plaintiff's contention. In Marshall, the Supreme Court
24 addressed whether torts involved with a widow's gift expectancy was within the
25 jurisdiction of the federal courts. After the widow filed for Chapter 11 bankruptcy, her

1 stepson filed a claim in the federal bankruptcy court alleging various torts. The widow
2 answered and filed counterclaims against her stepson claiming that the stepson had
3 tortiously interfered with gifts expected from her late husband. The district court
4 adopted and supplemented the bankruptcy court's findings and determined the
5 stepson had tortiously interfered with the widow's expectancy. The district court
6 awarded widow compensatory and punitive damages. On appeal, the Ninth Circuit
7 reversed, ruling the federal courts did not have jurisdiction over the subject matter
8 since the widow's counterclaims involved probate matters. The Supreme Court
9 reversed finding that the mother's counterclaims did not involve the administration of
10 an estate, the probate of a will, or any other core probate matter. The Court held:

12 [T]he probate exception reserves to state probate courts the
13 probate or annulment of a will and the administration of a
14 decendent's estate; it also precludes federal courts from
15 endeavoring to dispose of property that is in the custody of a
state probate court. But, it does not bar federal courts from
adjudicating matters outside those confines and otherwise in
federal jurisdiction.

16 Marshall, at 1748 (emphasis added).

17 The probate exception precludes jurisdiction over matters which "interfere with
18 the probate proceedings" of property within the custody of state courts. Marshall, at
19 1748 (citing Markham, at 494).

20 In contrast here, the Plaintiff is requesting the District Court to administer the
21 decedent's Estate by adjudging her as the sole heir to the decedent. The Plaintiff
22 states:

23
24 Plaintiff's claims does not involve the administration of an
25 estate, the probate of a will, or any other probate matter. She
seeks to quiet title on the property that has been in the
possession, custody, control, enjoyment and unfettered rights

1 of the Niloobans. She seeks to remove cloud on the title of this
2 property as a sole representative and heir of the decedent, not
the probate or annulment of a will.

3 Opposition, at 8.

4 The Plaintiff is clouding the issues. In her Amended Complaint, the Plaintiff is
5 praying this Court to give the property to her in fee simple. See, Prayer of Amended
6 Complaint. By the Court giving her quiet title in fee simple, this Court would be
7 required to adjudge her as the sole heir and disturb the possession of real property in
8 the custody of the Guam probate courts. In essence, the Court would be exercising *in*
9 *rem* jurisdiction over a *res* solely within the custody of Guam's probate courts. This is
10 strictly prohibited by the probate exception.

12 In recognition the federal court may not have jurisdiction to entertain or address
13 the administration of the Estate, the Plaintiff then attempts to amend her Amended
14 Complaint to name her as the representative of the Estate to sue for quiet title. See,
15 Plaintiff's Motion to Amend Pleadings. But even if the Plaintiff is permitted to amend
16 her complaint to name her as the personal representative of the estate, there is no
17 dispute between the Plaintiff and Defendants as to ownership, and the only
18 controversy between the two is the amount in rent.

19
20 **II. THERE IS NO DISPUTE BETWEEN THE PLAINTIFF AND THE**
21 **DEFENDANTS AND THE AMOUNT IN CONTROVERSY DOES NOT**
REACH \$75,000.00.

22 Nowhere have the Defendants ever disputed or opposed the Estate having title
23 to the property. In fact, Defendant NILOOBAN acknowledged all along that the Estate
24 owned the property. However, the Plaintiff is somehow under the impression the
25 Defendants claimed title by residing on the property. This is farther from the truth.

1 Since the Defendants do not dispute ownership of the property in the name of
2 the Estate, the only dispute that exists here is the amount of rent. The disputed rent is
3 approximately \$12,000.00. Even assuming the Plaintiff's calculations of rent are
4 accurate this fails to meet the "amount in controversy" of \$75,000.00.

5
6 **CONCLUSION**

7 The probate exception precludes the federal court from exercising jurisdiction
8 over matters involving the administration of an estate. Any decision that would
9 adjudge the Plaintiff as an heir, and provide her with quiet title to the property, would
10 interfere with the probate proceedings" of the Estate, solely within jurisdiction of
11 Guam's probate courts.

12 Moreover, the amount in controversy between the Plaintiff and Defendants fails
13 to satisfy the \$75,000.00 requirement. The amount in controversy between the
14 Plaintiff and Defendants is the amount of disputed rent, which only amounts to
15 \$12,000.00.

16 Therefore, the Court should dismiss this matter as this Court lacks subject
17 matter jurisdiction.

18 Respectfully submitted this 19th day of June, 2006.

19
20 **MAHER . YANZA . FLYNN . TIMBLIN, LLP**
21 Attorneys for Defendant
22 **MILAROSE NILOOBAN**

23
24 By: 

25 **LOUIE J. YANZA**

CERTIFICATE OF SERVICE

I, **LOUIE J. YANZA**, hereby certify that on the 19th day of June, 2006, I caused a copy of the annexed **DEFENDANT MILAROSE NILOOBAN'S REPLY IN SUPPORT OF HER MOTION TO DISMISS; CERTIFICATE OF SERVICE**, to be served upon the parties hereto, by either delivering, faxing and/or mailing a copy of same to their attorney of record, as follows:

Gerald E. Gray, Esq.
213 E Buena Vista Avenue, Suite 202
Dededo, Guam 96929-5321
Counsel for Plaintiff Elizabeth Tolosa-Taha

Dated this 19th day of June, 2006.

MAHER . YANZA . FLYNN . TIMBLIN, LLP
Attorneys for Defendant
MILAROSE NILOOBAN

By: _____

LOUIE J. YANZA